

United States District Court
Central District of California

MICHAEL TERPIN,

Plaintiff,

v.

AT&T MOBILITY, LLC et al.,

Defendants.

Case № 2:18-cv-06975-ODW (KSx)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT'S
RENEWED MOTION FOR
SUMMARY JUDGMENT [257]**

I. INTRODUCTION

Plaintiff Michael Terpin sued Defendant AT&T Mobility LLC after bad actors gained control over his cell phone number through a fraudulent “SIM swap” and used that control to steal his cryptocurrency. The Ninth Circuit affirmed dismissal of Terpin’s fraud and punitive damages claims and affirmed summary judgment for AT&T on Terpin’s negligence, breach of contract, and declaratory relief claims. Now on remand, AT&T renews its motion for summary judgment on Terpin’s sole remaining claim for violation of the Federal Communications Act (“FCA”). (Mot. Summ. J. (“Motion” or “MSJ”), ECF No. 257.) For the following reasons, the Court **GRANTS IN PART and DENIES IN PART** AT&T’s Motion.¹

¹ Having carefully considered the papers filed in connection with the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

1 II. BACKGROUND

2 The following material facts are undisputed. (See AT&T's Statement
3 Uncontested Facts ("SUF"), ECF No. 257-1; Terpin's Statement Genuine Disputes
4 ("SGD") and Additional Material Facts ("AMF"), ECF No. 260-4; AT&T's Resp.
5 SGD & AMF, ECF No. 264-1.)

6 A. Factual Background

7 Michael Terpin invests in cryptocurrency. (See SUF 13, 21, 26.)
8 Cryptocurrency is a type of digital currency that can only be accessed through a digital
9 wallet. (SUF 4-6.) A digital wallet holds private keys that are required to access the
10 cryptocurrency, and it can only be accessed remotely, i.e., on the internet. (SUF 4-6.)
11 Terpin stored the access credentials to his digital wallets in various physical flash
12 drives kept in secure locations. (SUF 10.)

13 In 2017, Terpin was the victim of a fraudulent "SIM swap." (AMF 1-3.) A
14 subscriber identity module, or "SIM," is a microchip that connects a cell phone to a
15 phone number and cell network. (SUF 1-3.) The cell network uses the SIM's data to
16 route communications to a specific customer's account. (SUF 1-2.) A "SIM swap"
17 occurs when a phone number becomes associated with a different SIM. (SUF 3.) The
18 swap causes the new SIM to receive all new incoming calls and messages on a going
19 forward basis. (SUF 20.)

20 Terpin reports that, in 2017, hackers impersonating him caused a fraudulent
21 SIM swap of his AT&T cell phone number, which led to his loss of some amount of
22 cryptocurrency. (AMF 2-3, 5.) Terpin met with an AT&T representative to correct
23 the SIM swap and obtain extra security for his AT&T account. (AMF 4, 6-8.) He
24 received heightened security on his account through the use of a six-digit code, as
25 opposed to the previous basic four-digit code. (AMF 6-8.) AT&T also placed a flag
26 about the fraud and heightened security prominently in his file. (AMF 8-10.)

27 Despite the precautions, in 2018, Terpin again fell victim to a fraudulent SIM
28 swap. (SUF 33.) The perpetrator, Ellis Pinksy, targeted Terpin because he believed

1 that Terpin was a cryptocurrency investor, and he knew certain facts about Terpin,
2 like his social security number, phone number, and that he did not use two-factor
3 authentication on his Gmail account. (SUF 9, 25–26.) Pinksy bribed Jahmil Smith,
4 an employee at an AT&T authorized retailer in Connecticut, to bypass security
5 measures and swap Terpin’s SIM to a phone controlled by Pinksy and his associates.
6 (SUF 31–33; AMF 47–48.) Pinksy then requested password reset messages to
7 Terpin’s phone number and used those messages to gain access to Terpin’s online
8 accounts, including Terpin’s OneDrive account, a Microsoft cloud storage service that
9 allows users to store files online. (SUF 14, 28–30; AMF 48–51.) Pinksy searched
10 Terpin’s OneDrive account and found a .txt file in the OneDrive trash folder
11 containing Terpin’s digital wallet credentials. (SUF 14, 30; AMF 52.) Pinksy then
12 used those credentials to access Terpin’s digital wallets and steal cryptocurrency that
13 Terpin claims was worth \$24,000,000. (SUF 30; AMF 54.)

14 **B. Procedural Background**

15 In August 2018, Terpin sued AT&T over the 2018 SIM swap. (Compl., ECF
16 No. 1.) Terpin asserted causes of action sounding in fraud, negligence, and contract,
17 as well as a statutory violation—unlawful disclosure under the FCA. (Second Am.
18 Compl. (“SAC”) ¶¶ 111–211, ECF No. 42.) He sought \$24,000,000 in damages and
19 up to \$216,000,000 in punitive damages, among other relief. (*Id.*, Prayer ¶¶ 1–2.)

20 In September 2020, the Court granted AT&T’s partial motion to dismiss and
21 dismissed Terpin’s fraud and punitive damages claims. (Order Granting Partial Mot.
22 Dismiss, ECF No. 49.) In March 2023, the Court granted AT&T’s motion for
23 summary judgment on all remaining claims. (Order Granting Mot. Summ. J., ECF
24 No. 243.) Terpin appealed both orders. (Notice Appeal, ECF No. 248.)

25 In September 2024, the Ninth Circuit Court of Appeals affirmed in part and
26 reversed in part the Court’s orders. *Terpin v. AT&T Mobility, LLC*, 118 F.4th 1102,
27 1108 (9th Cir. 2024). The Ninth Circuit affirmed the Court’s dismissal of Terpin’s
28 fraud and punitive damages claims and affirmed summary judgment for AT&T as to

1 all other claims save the FCA violation. *Id.* at 1110–19. As to the FCA cause of
2 action, the court found that Terpin established a triable issue over whether AT&T
3 “permitted access” to his customer proprietary network information (“CPNI”) through
4 the fraudulent SIM swap in violation of the FCA. *Id.* at 1116–17 (alteration omitted).
5 Accordingly, the Ninth Circuit reversed summary judgment for AT&T as to only the
6 FCA cause of action and remanded the case to this Court. *Id.* at 1119–20. The Ninth
7 Circuit also directed the Court to consider AT&T’s argument that Terpin cannot
8 establish proximate cause, as the Court had not reached that issue prior to appeal. *Id.*

9 Now on remand, AT&T renews its motion for summary judgment on the FCA
10 cause of action, arguing that Terpin cannot establish that the SIM swap was a
11 proximate cause of his cryptocurrency loss or that AT&T is liable for Smith’s
12 unauthorized conduct under the FCA. (MSJ 1–2.) The Motion is fully briefed.
13 (Opp’n, ECF No. 260; Reply, ECF No. 264.)²

14 III. LEGAL STANDARD

15 A court “shall grant summary judgment if the movant shows that there is no
16 genuine dispute as to any material fact and the movant is entitled to judgment as a
17 matter of law.” Fed. R. Civ. P. 56(a). A disputed fact is “material” where it might
18 affect the outcome of the suit under the governing law, and the dispute is “genuine”
19 where “the evidence is such that a reasonable jury could return a verdict for the

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21 ² AT&T objects to portions of Terpin’s opposition evidence. (See AT&T Evid. Objs., ECF
22 No. 264-2.) Some of the material to which AT&T objects is unnecessary to the resolution of the
23 Motion and the Court need not resolve those objections. For similar reasons, relevance- and
24 foundation-based objections are moot in the context of summary judgment motions. *Burch v.*
25 *Regents of Univ. of Cal.*, 433 F. Supp. 2d 1110, 1119 (E.D. Cal. 2006). Moreover, the Court does
26 not consider improper opinion and legal conclusions offered in the parties’ statements of fact and
27 dispute, (see Scheduling & Case Management Order (“Scheduling Order”) 6–9, ECF No. 53), so
28 AT&T’s objections on those bases are also moot. As for hearsay, a court may not *grant* a summary
judgment motion on the basis of hearsay evidence, but it may *deny* a summary judgment motion on
the basis of hearsay evidence as long as it finds that the hearsay evidence would be admissible at
trial. Fed. R. Civ. P. 56(e); *Fraser v Goodale*, 342 F.3d 1032, 1036–37 (9th Cir. 2003). Finally, to
the extent the Court relies on objected-to evidence in this order without further discussion, those
objections have been thoroughly considered and are overruled. See *Burch*, 433 F. Supp. 2d at 1122
(proceeding with only necessary rulings on evidentiary objections).

1 nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The
2 burden of establishing the absence of a genuine issue of material fact lies with the
3 moving party. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986).

4 Once the moving party satisfies its initial burden, the nonmoving party cannot
5 simply rest on the pleadings or argue that any disagreement or “metaphysical doubt”
6 about a material issue of fact precludes summary judgment. *See id.* at 324; *Matsushita*
7 *Elec. Indus. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The non-moving party
8 must show that there are “genuine factual issues that . . . may reasonably be resolved
9 in favor of either party.” *Cal. Architectural Bldg. Prods., Inc. v. Franciscan*
10 *Ceramics, Inc.*, 818 F.2d 1466, 1468 (9th Cir. 1987) (quoting *Anderson*, 477 U.S.
11 at 250) (emphasis omitted). Courts should grant summary judgment against a party
12 who fails to make a sufficient showing on an element essential to her case when she
13 will ultimately bear the burden of proof at trial. *Celotex*, 477 U.S. at 322–23.

14 In ruling on summary judgment motions, courts “view the facts and draw
15 reasonable inferences in the light most favorable” to the nonmoving party. *Scott v.*
16 *Harris*, 550 U.S. 372, 378 (2007) (internal quotation marks omitted). Conclusory,
17 speculative, or “uncorroborated and self-serving” testimony will not raise genuine
18 issues of fact sufficient to defeat summary judgment. *Villiarimo v. Aloha Island Air,*
19 *Inc.*, 281 F.3d 1054, 1061 (9th Cir. 2002); *Thornhill Publ’g Co. v. GTE Corp.*,
20 594 F.2d 730, 738 (9th Cir. 1979). Moreover, though the Court may not weigh
21 conflicting evidence or make credibility determinations, there must be more than a
22 mere scintilla of contradictory evidence to survive summary judgment. *Addisu v.*
23 *Fred Meyer, Inc.*, 198 F.3d 1130, 1134 (9th Cir. 2000).

24 The Court may assume that material facts claimed and adequately supported are
25 undisputed except to the extent that such material facts are (a) included in the
26 opposing party’s responsive statement of disputes *and* (b) controverted by declaration
27 or competent written evidence. C.D. Cal. L.R. 56-4. The Court is not obligated to
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1 look any further in the record for supporting evidence other than what is actually and
2 specifically referenced. *Id.*

3 **IV. DISCUSSION**

4 The Ninth Circuit found that Terpin raised a triable issue of material fact as to
5 whether AT&T violated the FCA by disclosing or allowing unauthorized access to
6 Terpin's CPNI. *Terpin*, 118 F.4th at 1116–19. It directed this Court to consider
7 AT&T's proximate cause arguments on remand. *Id.* at 1119–20. Now, AT&T argues
8 that, even assuming it violated the FCA, Terpin cannot establish that the FCA
9 violation proximately caused Terpin's cryptocurrency loss or that AT&T can be held
10 vicariously liable for Smith's actions under the FCA. (MSJ 1–2.) For the purposes of
11 this Motion, the Court construes the triable issue in favor of Terpin, as the non-moving
12 party, and assumes that AT&T violated the FCA. *See Scott*, 550 U.S. at 378.

13 **A. Proximate Causation**

14 AT&T first challenges Terpin's ability to establish that the FCA violation
15 proximately caused Terpin's cryptocurrency loss. (MSJ 6–12.) Terpin does not
16 seriously dispute that the FCA incorporates a proximate cause requirement but argues
17 that his loss is sufficiently foreseeable and direct to be legally attributed to AT&T's
18 FCA violation. (Opp'n 8–16.)

19 The FCA requires telecommunications carriers like AT&T to protect the
20 confidentiality of their customers' proprietary information. 47 U.S.C. § 222; *Terpin*,
21 118 F.4th at 1116–17. Section 222 was principally intended to protect consumer's
22 privacy interests. *Terpin*, 118 F.4th at 1116 (“While the broad purpose of the [FCA] is
23 to foster increased competition in the telecommunications industry, . . . the specific
24 and dominant purpose of § 222 is the protection of customer privacy.” (alterations in
25 original) (quoting *U.S. W., Inc. v. FCC*, 182 F.3d 1224, 1236 (10th Cir. 1999)).
26 Sections 206 and 207 grant private parties “an express right of action against common
27 carriers that improperly disseminate their CPNI.” *Conboy v. AT&T Corp.*, 241 F.3d
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1 242, 253 (2d Cir. 2001). A plaintiff bringing such a cause of action must “allege and
2 prove specific damages flowing from violations of the Act.” *Id.* at 250–51.

3 When Congress grants a federal cause of action, as it has under the FCA, unless
4 it states otherwise, Congress incorporates the established principle that loss must be
5 attributed “to the proximate cause, and not to any remote cause.” *Fields v. Twitter, Inc.*,
6 881 F.3d 739, 744 (9th Cir. 2018) (quoting *Bank of Am. Corp. v. City of Miami, Fla.*, 581 U.S. 189, 201 (2017)). Because “the judicial remedy cannot encompass
7 every conceivable harm that can be traced to alleged wrongdoing,” *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 132 (2014), courts use the judicial
8 tool of proximate cause “to limit a person’s responsibility for the consequences” of
9 their acts, *Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 268 (1992).

12 “To say that one event was a proximate cause of another means that it was not
13 just any cause, but one with a sufficient connection to the result.” *Paroline v. United States*, 572 U.S. 434, 444 (2014). Harm that is too remote from the alleged
14 misconduct, attributable to a number of other reasons, or purely derivative of
15 “misfortunes visited upon a third person by the defendant’s acts” is too attenuated.
16 *Lexmark*, 572 U.S. at 133, 139–40. In contrast, where the harm is an integral aspect of
17 or is surely attributable to the defendant’s misconduct, “there can be no question that
18 proximate cause is satisfied.” *Id.* at 139 (internal quotation marks omitted).

20 Where the plaintiff alleges harm from defendant’s violation of a statute, the
21 “[p]roximate-cause analysis is controlled by the nature of the statutory cause of
22 action.” *Id.* at 133. “The question it presents is whether the harm alleged has a
23 sufficiently close connection to the conduct the statute prohibits.” *Id.* In evaluating
24 the relative closeness of that connection, courts consider whether the harm was
25 foreseeable and within the scope of risk from the violation, and whether the violation
26 bears a direct relationship to the alleged injury. *See Hemi Grp., LLC v. City of New
27 York*, 559 U.S. 1, 12 (2010) (“The concepts of direct relationship and foreseeability

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1 are of course two of the ‘many shapes proximate cause took at common law.’”
2 (alteration omitted) (quoting *Holmes*, 503 U.S. at 268)).

3 Proximate cause is generally a question of fact for the jury. *Steinle v. United*
4 *States*, 17 F.4th 819, 822 (9th Cir. 2021). However, where the facts are undisputed
5 and only one inference may reasonably be drawn from them, it becomes a question of
6 law for the court. *Id.* (“[W]here the facts are such that the only reasonable conclusion
7 is an absence of causation, the question is one of law, not of fact.”).

8 AT&T relies primarily on the direct relationship analysis, (MSJ 6–12), while
9 Terpin emphasizes foreseeability, (Opp’n 8–12). Regardless of the analysis, based on
10 the evidence in the record, a reasonable juror could conclude that AT&T’s violation of
11 the FCA is a proximate cause of Terpin’s cryptocurrency loss.

12 *1. Foreseeability and Scope of Risk*

13 Foreseeability is one of the “‘judicial tools’ in the proximate cause toolshed.”
14 *Fields*, 881 F.3d at 747 (quoting *Holmes*, 503 U.S. at 268). Courts consider whether
15 the alleged harm was foreseeable from, or within “the scope of the risk created by,” a
16 violation of the statute. *County of Los Angeles v. Mendez*, 581 U.S. 420, 431 (2017)
17 (quoting *Paroline*, 572 U.S. at 444–45); *Steinle*, 17 F.4th at 823 (noting that a plaintiff
18 must “show the [harm] was reasonably within the scope of the risk created by the
19 initial act”).

20 Based on the record before the Court, a reasonable juror could find that
21 financial theft is a foreseeable harm from an unauthorized disclosure of CPNI via a
22 fraudulent SIM swap. Terpin submits evidence supporting that AT&T was aware of
23 the dangers SIM swap fraud poses, both to Terpin specifically and to cellphone users
24 generally. (See AMF 1–3, 5–12, 16–17, 19–24.) Construing these facts in Terpin’s
25 favor, the risk to Terpin specifically was foreseeable to AT&T because Terpin
26 previously reported to AT&T in 2017 that he was the victim of a fraudulent SIM swap
27 resulting in the loss of cryptocurrency. (AMF 1–3, 5–12.) In response, AT&T
28 provided him with extra security due to the known risk that he may again be targeted.

1 (AMF 6–8.) And AT&T placed an alert in Terpin’s file flagging that he had been the
2 target of SIM swap fraud and that access to his account should be prohibited absent
3 identity authentication with the heightened security code. (AMF 8–10.) The risk to
4 cellphone users generally was also foreseeable to AT&T because AT&T published
5 training materials and cyber awareness blogs cautioning AT&T employees and
6 customers about the financial risks of fraudulent SIM swaps. (AMF 16–17, 20–24;
7 *see* AMF 22 (Cyber Aware blog cautioning customers that a SIM swap may enable a
8 thief to “gain access to [the customer’s] financial or social media accounts”)). Thus,
9 the risk of financial harm from SIM swap fraud to Terpin was not just foreseeable;
10 AT&T foresaw it.

11 This conclusion is further supported by a report from the Federal
12 Communications Commission (“FCC”) discussing that financial theft is within the
13 scope of risk that a fraudulent SIM swap poses. The FCC issued a Report and Order,
14 which describes the fraudulent practice of SIM swaps and proposes measures
15 designed to prevent them and the harm they can cause. *In the Matter of Protecting*
16 *Consumers from SIM Swap and Port-Out Fraud*, 38 F.C.C. Rcd. 11182, 11183, ¶ 1
17 (2023) (“*In re Prot. Consumers*”).³ In the Report, the FCC describes how a bad actor
18 can use a fraudulent SIM swap to gain access to a customer’s CPNI and then take
19 control of their other online accounts. *Id.* at 11184, ¶ 7. Via the SIM swap, “the bad
20 actor may have the means to . . . obtain sensitive information [and] drain bank
21 accounts.” *Id.* at 11184–85, ¶ 7. This is precisely what happened in this case: the bad
22 actor, Pinksy, orchestrated a fraudulent SIM swap to gain access to Terpin’s CPNI,
23 used that access to gain control of Terpin’s online accounts, used that control to find
24 sensitive information including Terpin’s digital wallet credentials, which Pinksy then
25 used to drain Terpin’s cryptocurrency accounts.

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27 ³ Although the FCC issued this Report and Order in 2023, after the 2018 unauthorized SIM swap, it
28 nonetheless supports the proposition that financial theft from fraudulent SIM swaps is reasonably
foreseeable.

1 Thus, Terpin offers evidence from which a reasonable juror could conclude that
2 the harm alleged here (Terpin’s cryptocurrency loss) was reasonably foreseeable and
3 within the scope of risk of the statutory violation here (unauthorized CPNI disclosure
4 via fraudulent SIM swap).

5 2. *Direct Relationship*

6 Focusing on the direct relationship analysis, AT&T argues that the connection
7 between its alleged violation and Terpin’s claimed damages is too attenuated to permit
8 a finding of proximate cause. (MSJ 7.) It contends proximate cause in statutory cases
9 is limited to the “first step” in the causal chain, and Terpin’s harm requires many
10 intervening, fortuitous events beyond that first step. (*Id.*) Terpin argues the precedent
11 AT&T cites limiting proximate cause to the “first step” is not the inflexible rule that
12 AT&T portrays. (Opp’n 9.) He contends the direct relationship analysis instead looks
13 at whether a party is directly impacted by the alleged misconduct. (*Id.*)

14 Even “where the Court has given [the] foreseeability analysis more weight,” it
15 still requires “the presence of some direct relationship between the defendant’s acts
16 and the injury.” *Fields*, 881 F.3d at 748. The direct relationship analysis considers
17 whether there was “some direct relation between the injury asserted and the” statutory
18 violation. *City of Oakland v. Wells Fargo & Co.*, 14 F.4th 1030, 1032 (9th Cir. 2021)
19 (quoting *Bank of Am.*, 581 U.S. at 201).

20 Terpin points to evidence from which a reasonable juror could find that Terpin’s
21 harm bears a direct relationship to the FCA violation. (Opp’n 12–14.) First, the Court
22 assumes that AT&T violated the FCA, by disclosing or allowing unauthorized access
23 to Terpin’s CPNI via the SIM swap. *Terpin*, 118 F.4th at 1116 (finding whether AT&T
24 violated FCA is a triable issue of fact). Next, it is undisputed that Pinksy used
25 Terpin’s CPNI (e.g., the cellphone account and messages) to reset Terpin’s passwords
26 and gain access to Terpin’s online accounts. (SUF 28–30.) It is also undisputed that,
27 in the online accounts, Pinksy found the credentials necessary to access Terpin’s
28 cryptocurrency, which Pinksy then stole. (SUF 30.) So, here, AT&T failed to protect

1 Terpin’s CPNI, disclosing or allowing access to Terpin’s CPNI by a bad actor, who
2 then used the CPNI to harm Terpin through financial theft. That this direct line from
3 the statutory violation to the ultimate theft required several acts by Pinksy and errors
4 by Terpin does not necessarily diminish the directness of the connection. Thus, a
5 reasonable juror can conclude that Terpin’s harm bears a direct relationship to AT&T’s
6 acts.

7 AT&T argues that because Terpin’s harm is not within the “first step,” there can
8 be no direct relationship. (MSJ 6–12.) However, it is the “general tendency” not to
9 go “beyond the first step” in the causal chain because there “ordinarily is a
10 ‘discontinuity’ between the injury to the direct victim and the injury to” downstream,
11 indirect victims, whose harm might “have resulted from ‘any number of [other]
12 reasons.’” *Lexmark*, 572 U.S. at 139–40. It is the “nature of the statutory cause of
13 action” that governs what falls within the “first step.” *Id.* at 133.

14 The statutory cause of action Terpin asserts here is a violation of § 222 by
15 disclosing or allowing unauthorized access to his CPNI. (FAC ¶¶ 133–41.) Congress
16 intended § 222 to protect consumer’s privacy interests. *Terpin*, 118 F.4th at 1116.
17 Thus, AT&T owed the statutory obligation it allegedly violated to Terpin, a consumer
18 of AT&T’s cell service and the very type of victim the statutory cause of action sought
19 to protect. *See* 47 U.S.C. § 222 (“Every telecommunications carrier has a duty to
20 protect the confidentiality of proprietary information of, and relating to, . . .
21 customers . . .”). Further, the harm—financial theft by bad actor fraud—is a type of
22 harm envisioned as flowing directly from unauthorized disclosure of CPNI. *See In re*
23 *Prot. Consumers*, 38 F.C.C. Rcd. at 11184, ¶ 5 (discussing that bad actors use
24 fraudulent SIM swaps to gain access to CPNI to control a customer’s accounts). Thus,
25 a reasonable juror could find that the nature of the statutory FCA cause of action bears
26 a direct relationship to Terpin injury, bringing it within the “first step.”

27 AT&T argues to the contrary, that Terpin’s loss was far too remote from the
28 SIM swap to be considered within the “first step.” (MSJ 6–12.) It details the

1 numerous “separate, intervening events” necessary to the eventual theft, expanding the
2 direct connection described above. (*Id.* at 10.) Pinsky targeted Terpin; Pinsky bribed
3 Smith to swap the SIM; Smith accepted the bribe and circumvented Terpin’s
4 heightened security; Terpin did not use two-factor authentication on his Gmail
5 account; Pinsky reset Terpin’s Gmail password; Terpin did not use a non-SMS
6 authenticator on his Microsoft account; two of Terpin’s Microsoft software products
7 malfunctioned (Authenticator and OneDrive); Terpin unnecessarily copied and pasted
8 his crypto passwords into an unsecured .txt file; OneDrive backed up the .txt file in an
9 online trash folder, where Pinsky found it; and Pinsky used the passwords to steal
10 Terpin’s cryptocurrency. (*Id.*) AT&T is correct to the extent that a reasonable juror
11 could find that the criminal bribe, Terpin’s poor security practices, and his ill-advised
12 copy/paste practice are intervening events that attenuate the causal chain beyond
13 proximate cause. But a reasonable juror could also conclude that none of these details
14 make the connection between the unauthorized SIM swap and the theft any less direct.
15 Thus, because more than one inference can reasonably be drawn from the undisputed
16 facts, summary judgment on proximate cause is not appropriate.

17 Nevertheless, AT&T contends that binding precedent requires the conclusion
18 that Terpin’s harm goes beyond that “first step.” (*Id.* at 9–10.) But each of the cases
19 on which AT&T relies concerns different statutes, involves victims or harms not fairly
20 contemplated or directly impacted by the statute at issue, and reflects remarkably
21 more attenuated causal chains than the one before the Court.

22 For instance, AT&T cites *City of Oakland* to argue that proximate cause does
23 not extend beyond the “first step” “in statutory cases like this one.” (*Id.* at 9.) In
24 *Oakland*, the city alleged Wells Fargo violated the Fair Housing Act (“FHA”),
25 claiming the lender’s predatory lending practices caused the city to lose property tax
26 revenues after borrowers defaulted on their loans. 14 F.4th at 1032. The Ninth Circuit
27 found that the alleged violation (predatory lending) did not have a direct relation to the
28 city’s harm (lost property tax revenue) and thus the alleged violation was not a

1 proximate cause of the harm. *Id.* at 1040. The court discussed that the FHA protects
2 borrowers from discriminatory lending at the “first step,” meaning the “harm to the
3 *borrower* has a clear direct relation to conduct prohibited by the FHA.” *Id.* at 1036
4 (emphasis added). The city’s harm exceeded that first step. It had no direct relation to
5 conduct the FHA prohibited: the city was not the subject of the statute’s protections
6 and its harm was the result of downstream ripples from FHA-prohibited conduct. *Id.*
7 at 1039–40.

8 Overlaying *Oakland* with the facts here reveals that the causal relationship
9 between AT&T’s FCA violation and Terpin’s harm is clearly distinguishable. Where
10 the FHA protects borrowers from discriminatory lending at the first step, the FCA
11 protects cellular service consumers from unauthorized disclosure of their CPNI at the
12 first step. Thus, the statutory relationship between AT&T as the carrier and Terpin as
13 the consumer is direct. Unlike the city’s harm in *Oakland*, Terpin’s harm here does
14 not go beyond the “first step” by relying on downstream ripples from the prohibited
15 conduct but instead bears a 1:1 relationship to the unauthorized disclosure. To
16 conceive of a causal chain that could make *Oakland* analogous, imagine that Terpin
17 could not pay his creditors because of the cryptocurrency theft. Terpin’s creditors
18 would suffer from the downstream ripples of AT&T’s violation. If the creditors then
19 sued AT&T for lost revenue, that harm would be beyond the first step of the FCA
20 violation, comparable to the city’s lost tax revenue in *Oakland*. But these are not the
21 facts here. Instead, Terpin is the type of victim the statute protects, and his harm bears
22 a 1:1 direct relationship to the statutory violation.

23 AT&T’s reliance on *Hemi Group* fares no better. (MSJ 11 (arguing that
24 “Terpin’s theory exhibits the same flaws that caused the Supreme Court to reject
25 proximate cause in” *Hemi Group*.) In *Hemi Group*, the City of New York sued Hemi,
26 an out-of-state online cigarette retailer, for RICO mail and wire fraud, asserting that
27 Hemi’s failure to submit statutory reports to New York State caused the city to lose tax
28 revenue. 559 U.S. at 6–7. The Ninth Circuit found the alleged fraud (failure to

1 submit Jenkins Act reports to the State) did not have a direct relationship to the city’s
2 harm (lost tax revenue). *Id.* at 4, 10–12. The causal chain demonstrates why. The
3 city taxed possession of cigarettes. *Id.* at 5. Hemi sold cigarettes to residents of the
4 city online. *Id.* The Jenkins Act, 15 U.S.C. §§ 375–378 required out-of-state retailers
5 to report their customer information to New York State. *Id.* The state had agreed to
6 share these reports with the city. *Id.* at 5–6. Once received, the city would track down
7 cigarette purchasers and recover the cigarette taxes. *Id.* at 6. The city claimed that it
8 lost tax revenue because Hemi sold cigarettes without reporting its customer
9 information to the state, meaning the city could not recover the taxes from the untaxed
10 customers. *Id.* at 6–7.

11 For the city to establish a direct relationship between its harm and the statute,
12 the court noted “the City must show that Hemi’s failure to file the Jenkins Act reports
13 with the State led directly to” the city’s injuries of lost back taxes. *Id.* at 14.
14 However, Hemi’s statutory obligation under the Jenkins Act was to the *state*, not the
15 city. *Id.* at 10–11. So, the “direct relation” for proximate cause purposes existed
16 between Hemi’s failure to file the report and the *state’s* injury. *Id.* at 11. And the city
17 was harmed by *customers* not fulfilling their obligation to the city to pay cigarette
18 taxes, not by Hemi’s failure to file a report. *Id.* Thus, the city’s harm in lost tax
19 revenue exceeded the first step from Hemi’s alleged statutory violation in not
20 submitting reports to the state. *Id.* As the city relied on downstream ripples of harm
21 from Hemi’s violation for its causal chain, the court found the city could not establish
22 the direct relationship necessary for proximate cause. *Id.* at 11 (“The City’s theory
23 thus requires that we extend RICO liability to situations where the defendant’s fraud
24 on the third party (the State) has made it easier for a *fourth* party (the taxpayer) to
25 cause harm to the plaintiff (the City).”).

26 In contrast to *Hemi Group* and *Oakland*, where the defendant owed a statutory
27 obligation to someone other than the plaintiff, here, AT&T owed its statutory
28 obligation under the FCA to Terpin as an AT&T customer. AT&T’s alleged statutory

1 violation thus harmed the very party the statute is designed to protect. And it did so in
2 a way contemplated by the regulations. That Pinksy effectuated the harm as a
3 third-party bad actor does not remove Terpin’s harm from the first step, particularly
4 because the statute and regulations contemplate bad actor fraud as a potential harm
5 flowing from the unauthorized disclosure of CPNI.

6 Finally, AT&T points to language in the FCC’s Report, that it “would be
7 inequitable” to impose “liability on wireless providers” alone for the financial harms
8 that a bad actor may perpetrate using SIM swap fraud. (MSJ 11 (quoting *In re Prot.*
9 *Consumers*, 38 F.C.C. Rcd. at 11229, ¶ 80).) AT&T is correct that the FCC found the
10 responsibility for financial harms from bad actors should be borne by several parties,
11 including the bad actors. *In re Prot. Consumers*, 38 F.C.C. Rcd. at 11229, ¶ 80. Still,
12 the FCC makes clear *in the very same paragraph* that this does not amount to “a safe
13 harbor for wireless providers; customers will still be able to pursue any existing
14 remedies available by law.” *Id.* Thus, AT&T reliance on the FCC’s Report for this
15 point is unpersuasive.

16 Whether considering foreseeability, direct relationship, or some combination of
17 the two, a reasonable juror could conclude that the undisputed events leading from the
18 SIM swap to the theft of Terpin’s cryptocurrency demonstrates the essential hallmarks
19 of proximate cause. Therefore, as more than one inference may be reasonably drawn
20 from the undisputed facts, the Court must deny summary judgment on this basis.

21 **B. Vicarious Liability**

22 AT&T also argues that it cannot be liable under the FCA for Smith’s acts as a
23 matter of law, because under applicable Connecticut law, Smith was acting outside the
24 scope of his employment when he accepted the bribe and improperly swapped
25 Terpin’s SIM.⁴ (MSJ 13–15.) Terpin does not dispute that Connecticut law applies to
26 determine whether Smith was acting within the scope of his employment. (See

27 ⁴ Smith was employed by Spring Communications, an AT&T authorized retailer, and not by AT&T
28 directly. (SUF 29–30.) However, for the purposes of this Motion, the Court follows the parties’
lead and treats Smith as though he were a direct AT&T employee. (MSJ 13–14; Opp’n 17–18.)

1 generally Opp'n 16–18.) Instead, Terpin contends that it was foreseeable that Smith
2 would conduct unauthorized SIM swaps. (*Id.* at 17–18.) He also argues that even if
3 AT&T is not liable for Smith's acts, AT&T is liable for its own misconduct in failing
4 to reasonably ensure its security measures and authentication policies were followed.⁵
5 (*Id.* at 17.)

6 Section 217 of the FCA makes carriers like AT&T liable for the acts and
7 omissions of any “person acting for or employed by” the carrier, “acting within the
8 scope of his employment.” The parties appear to agree that, because the unauthorized
9 SIM swap occurred in Connecticut, that state's law applies to determine whether
10 Smith was “acting within the scope of his employment.” 47 U.S.C. § 217; (see
11 MSJ 14; Opp'n 17); *McLachlan v. Bell*, 261 F.3d 908, 911 (9th Cir. 2001) (applying
12 the law of the state where conduct occurred to determine whether employee was
13 acting within scope of employment).

14 “In determining whether an employee has acted within the scope of
15 employment,” Connecticut law looks to whether the employee's conduct: “(1) occurs
16 primarily within the employer's authorized time and space limits; (2) is of the type
17 that the employee is employed to perform; and (3) is motivated, at least in part, by a
18 purpose to serve the employer.” *2 Nat'l Place, LLC v. Reiner*, 152 Conn. App. 544,
19 558 (2014) (quoting *Harp v. King*, 266 Conn. 747, 782–83 (2003)). An employee may
20 still be “acting within the scope of his employment” even though his conduct is
21 “negligent, disobedient and unfaithful.” *A-G Foods, Inc. v. Pepperidge Farm, Inc.*,
22 216 Conn. 200, 209 (1990). So long as an employee was “actuated at least in part by
23 a purpose to serve a principal,” the principal may be liable. *Fiano v. Old Saybrook*
24 *Fire Co. No. 1, Inc.*, 332 Conn. 93, 102 (2019). However, when an employee

25 ⁵ Terpin further argues that it is procedurally improper for AT&T to raise this vicarious liability
26 issue in the renewed summary judgment motion, claiming that AT&T did not adequately meet and
27 confer on the subject. (Opp'n 16–17.) However, AT&T included this argument in the parties' Joint
28 Statement proposing the renewed motion for summary judgment, and AT&T's potential liability for
Smith's acts falls within the proximate cause analysis the Court is authorized to consider. (See Joint
Statement 4, ECF No. 254); *Terpin*, 118 F.4th at 1119–20.

1 abandons his employer's business and is motivated in no part by a purpose to serve his
2 employer, the employee is acting outside the scope of his employment and his
3 employer will not be liable for his actions. *Id.*

4 Ordinarily, whether an employee's misconduct occurred within the scope of his
5 employment is a question of fact for the jury. *Id.* at 103. "But there are occasional
6 cases where a servant's digression from duty is so clear-cut that the disposition of the
7 case becomes a matter of law." *A-G Foods*, 216 Conn. at 207.

8 1. *Conduct within employer's authorized time and space limits & of the type*
9 *the employee is employed to perform*

10 The first two elements consider whether the conduct at issue occurs within the
11 employer's authorized time and space limits and is of the type that the employee is
12 employed to perform. *Harp*, 266 Conn. at 783.

13 Terpin offers evidence that Smith was working alone during regular business
14 hours in a Connecticut store of an AT&T-authorized retailer when he processed the
15 unauthorized SIM swap. (AMF 35; Decl. Timothy J. Toohey Ex. 8 ("Terpin Account
16 Notes") 3733–34, ECF No. 260-2 (redacted), 265 (sealed).) He also offers evidence
17 suggesting that Smith regularly conducted SIM swaps as part of his job duties.
18 (AMF 28, 34, 38; Terpin Account Notes 3733–34.) Smith used AT&T's OPUS
19 computer system to perform the swap, which is the same system AT&T employees
20 use. (AMF 28, 38.) Thus, Terpin offers evidence from which a reasonable juror could
21 find that, when Smith conducted the unauthorized SIM swap, he did so within the
22 employer's authorized time and space limits, and his conduct was of the type that he
23 was employed to perform.

24 2. *Employee is motivated at least in part by a purpose to serve the employer*
25 The remaining element requires that the employee's conduct be motivated, at
26 least in part, by a desire to further the employer's interests. *Harp*, 266 Conn. at 783.

27 In contrast to the first two elements, Terpin offers no evidence to support that
28 Smith had any motivation to further AT&T's interests when he swapped Terpin's SIM.

1 Smith accepted a bribe to perform the SIM swap, (SUF 33), which can only indicate
2 he was motivated by his own self-interest. Although he was performing the type of
3 task routinely included in his job duties, to complete *this* SIM swap, he falsified
4 account records and circumvented authentication procedures AT&T put in place. (See
5 AMF 38 (Smith required to use AT&T authentication procedures), 39 (Smith manually
6 bypassed authentication procedures), 40 (Smith falsely noted in Terpin Account Notes
7 that he had verified Terpin's identity).) Terpin offers nothing to suggest that Smith
8 took these actions to further AT&T's interests, or that AT&T somehow benefited from
9 them.

10 Were Smith just doing his job poorly, rather than intentionally and
11 surreptitiously circumventing his employer's interests, it may have been reasonable to
12 think he was acting within the scope of his employment. *See Williams v. AT&T*
13 *Mobility, LLC*, No. 5:19-cv-475-BO, 2020 WL 1492803, at *4 (E.D.N.C. Mar. 25,
14 2020) (finding AT&T employee was acting within scope of employment because he
15 sought to further employer's interests when performing SIM swaps for bad actors
16 impersonating the plaintiff). But here, Terpin offers no evidence suggesting that
17 Smith was merely doing his job poorly, that Smith's acts were in furtherance of
18 AT&T's interests, or that Smith was "actuated" by a purpose to benefit anyone but
19 himself (and possibly Pinksy). Terpin also does not identify any particular interest of
20 AT&T's that could have been advanced by Smith accepting a bribe to swap Terpin's
21 SIM without proper authentication.

22 Terpin argues that summary judgment on AT&T's liability for Smith's acts is
23 inappropriate because facts are in dispute regarding Smith's prior unauthorized SIM
24 swaps and the way Smith conducted the 2018 SIM swap at issue here. (Opp'n 18.)
25 But these facts are not material because they do not suggest that Smith was in any way
26 motivated by a desire to further AT&T's interests when he conducted the SIM swap at
27 issue in this case. There is no evidence before the Court from which a reasonable
28 juror could conclude that Smith was motivated by a purpose to advance AT&T's

1 interests when he accepted a bribe to fraudulently swap Terpin’s SIM without
2 authorization. Therefore, Smith’s digression from the scope of his duties was so clear
3 that AT&T is not liable for his conduct as a matter of law. AT&T is thus entitled to
4 summary judgment on Terpin’s FCA cause of action to the extent it is premised on
5 Smith’s conduct.

6 Still, AT&T remains liable for its own conduct. Terpin’s FCA cause of action is
7 premised in part on AT&T’s alleged failure to protect the confidentiality of his CPNI,
8 follow its own security procedures, supervise its employees, comply with regulations,
9 and prevent employees from bypassing authentication procedures. (FAC ¶¶ 133–41.)
10 The FCC’s rules implementing § 222 require carriers to “take reasonable measures to
11 discover and protect against attempts to gain unauthorized access to CPNI” and to
12 “properly authenticate a customer prior to disclosing CPNI.” 47 C.F.R. § 64.2010(a).
13 “[T]o violate a regulation that lawfully implements [a statute’s] requirements is to
14 violate the statute.” *Glob. Crossing Telecomms., Inc. v. Metrophones Telecomms., Inc.*,
15 550 U.S. 45, 54 (2007). On this basis, there is sufficient evidence before the
16 Court for a reasonable juror to find that AT&T failed to “take reasonable measures . . .
17 to protect against” unauthorized disclosure and “properly authenticate” Terpin’s
18 identity before allowing access to his CPNI via the fraudulent SIM swap. 47 C.F.R.
19 § 64.2010(a). As such, AT&T is not entitled to summary judgment on Terpin’s FCA
20 cause of action to the extent it is premised on AT&T’s conduct.

21 V. CONCLUSION

22 For the reasons discussed above, the Court **GRANTS IN PART** and **DENIES**
23 **IN PART** AT&T’s Renewed Motion for Summary Judgment. (ECF No. 257.)
24 Specifically, the Court grants summary judgment in favor of AT&T to the extent
25 Terpin’s FCA claim is premised on Smith’s actions and denies the Motion in all other
26 respects.

27 In light of the clarified issues, the parties are **REFERRED** to the assigned
28 Magistrate Judge for a Settlement Conference. The deadline to conduct that

1 Settlement Conference is **December 8, 2025**. The Court sets a jury trial on the
2 Court's next available trial date, **March 3, 2026, at 9:00 a.m.** The Courts sets the
3 pretrial conference on **February 23, 2026, at 1:30 p.m.** The parties are reminded that
4 they may consent to proceed before a Magistrate Judge appearing on the voluntary
5 consent list, who may have sooner trial availability.

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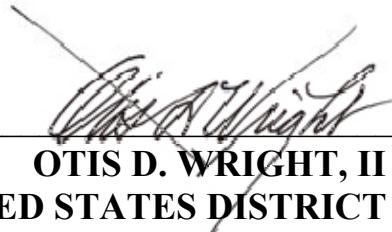
7 **IT IS SO ORDERED.**

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9 July 16, 2025

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13 **OTIS D. WRIGHT, II**
14 **UNITED STATES DISTRICT JUDGE**

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